IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 33 OF 2004

Shri Surendranath Sripad Sinai Dessai,
Pernem Town, Pernem,
Pernem Taluka, Goa. ..... Appellant.

V/s.

The Special Land Acquisition Officer,
Konkan Railway Corporation Ltd.,
North Division, Panaji,
with his Office at Souza Towers,
Opp. Municipal Garden, Panaji, Goa. ..... Respondent.

Mr. S.G. Dessai, Sr. Advocate with Mr. L. Alornekar, Advocate for the appellant.

Mr. E. Afonso, Advocate for the respondent.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE : MARCH 14, 2005.

ORAL JUDGMENT : (Per. LAVANDE, J.)

The appellant challenges the Award dated 28th October, 2003, passed by the IInd Addl. District Judge, Panaji in Land Acquisition Case No.56/1996, dismissing the reference.

2. By Notification dated 19.9.1991, an area admeasuring 12,050.00 sq. metres, forming part of Survey No.306(part), situated in Village Dhargal, Pernem Taluka was acquired for the Konkan Railway Corporation Ltd.. The Land Acquisition Officer fixed the market rate at the rate of Rs.14.40 per sq. metre by Award dated 28th January, 1994. The appellant sought reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), claiming compensation at the rate of Rs.100/- per sq. metre. In Land Acquisition Case No.56/96, the applicant examined three witnesses and the respondent examined none. After considering the evidence led by the appellant, the reference Court held that the appellant was not entitled to any higher compensation and consequently, rejected the reference.

3. Mr. Dessai, learned Senior Counsel appearing for the appellant, at the outset submitted that this is a fit case in which an order of remand ought to be passed since the reference Court has not considered the documentary evidence in the nature of five Judgments and Awards which were produced before the reference Court. The learned Counsel invited our attention to two applications, one dated 3.3.200 and the other dated 25.1.2002 and the orders passed on the said applications. By the said orders, the appellant who was the applicants before the reference Court, was permitted to rely upon and produce five different Judgments and Awards.

4. Mr. Dessai, learned Senior Counsel appearing for the appellant submitted that the reference Court ought to have taken into consideration these five documents before passing the impugned Judgment and Award. The learned Senior Counsel further submitted that the finding of the reference Court that the acquired land is an agricultural tenanted land, is contrary to the evidence on record and, as such, perverse. It was further submitted that the reference Court has not correctly appreciated the evidence led by the appellant and has failed to determined the market value of the acquired land in terms of the Act.

5. Per contra, Mr. Afonso, learned Counsel appearing for the respondent has submitted that the acquired land is agricultural land and in view of Section (2) of the Goa Land Use (Regulation) Act, 1991, the acquired land being agricultural tenanted land, the applicant is not entitled to any enhancement of compensation because the said land cannot be put to any other use, in view of the bar under the said Act. According to the learned Counsel, there is a clear admission on the part of the applicant himself that the land acquired is tenanted and the acquired land being agricultural tenanted land, the applicant is not entitled to any enhancement of compensation, on the ground that the

acquired land has building potential. The learned Counsel further submitted that on this count only, the reference Court was fully justified in dismissing the reference. The learned Counsel further submitted that in any event, the applicant has not led any evidence to substantiate his claim for enhanced compensation.

6. We have considered the submissions made by the learned Counsel for the parties. We are unable to accept the submission of the learned Counsel for the appellant that this matter has to be remanded to the reference Court to permit the applicant to produce the five Judgments and Awarded in respect of which the reference Court had granted leave to the applicant/appellant to produce on record. From the evidence adduced by the applicant, it is clear that the applicant did not choose to produce the said documents in evidence, although leave was granted to him to produce the documents in evidence. Needless to emphasize that mere production of documents along with an application is one thing and tendering the document in evidence, is another thing. The applicant having chosen not to produce the said Judgments and Award in evidence, although he was granted leave, the appellant now cannot be heard to say that the matter deserves to be remanded to enable the applicant to produce the said documents in evidence. We are, therefore, unable to accept the submission made by the learned Senior Counsel that the matter deserves to be remanded to the reference Court.

7. In so far as the nature of the land is concerned, although the applicant in his examination-in-chief has not made any reference to tenancy, however, in cross examination he has stated thus :

> "The enjoyment of the property was common and hence I cannot specify the area of my 1/8 th share. There is no tenant in the acquired land. Shivaji Dessai, Ramchandra Dhargalkar and Ankush Parab were tenants of other share holders. It is not true to suggest that the entire survey No.306 is tenanted land."

The above evidence given by the applicant in cross examination, clearly establishes that the property was common and Shivaji Dessai, Ramchandra Dhargalkar and Ankush Parab were tenants in respect of the property bearing Survey No.306. That being the position, the only conclusion which can be drawn is that the acquired land was also tenanted and since the acquired land was admittedly agricultural land, the bar under Section (2) of the Act is clearly attracted which prevented the use of the acquired land for any other purposes. The applicant has also not led any evidence to substantiate that he is in possession of a separate portion which is untenanted. That being the position, in our opinion, the reference Court was fully justified in holding that the

acquired land was agricultural tenanted land and, as such, the applicant was not entitled to higher compensation. On this count itself, the reference Court was fully justified in rejecting the reference.

8. Even otherwise, the evidence of the applicant himself and that of his two witnesses namely Rajendra Thakur (AW.2) and Subhashchandra N. Bhobe (AW.3), does not advance the case of the applicant any further. The applicant has produced an Award passed in Land Acquisition Case No.117/97 (Exhibit-26) in support of his claim for enhancement and there is absolutely no evidence brought on record to prove the similarity of the acquired land vis-a-vis the land in that case. In so far as evidence of Rajendra Thakur (AW.2), is concerned, he has stated that there are no tenants in the property bearing Survey No.306/0. The said statement, on the face of it, is contrary to the statement made by the applicant himself. His evidence does not advance the case of the applicant for claiming higher compensation. In so far as the evidence of Subhashchandra N. Bhobe (AW.3), is concerned, the reference Court has rightly not placed reliance on the same. Firstly, he had visited the property somewhere in June-July, 2002 and as such, the reference Court relying upon the Judgment of this Court in the case of ***Special Land Acquisition Officer, Bombay and Bombay Sabarban District Municipal Corporation vs. Vishanji Virji Mepani and another*** (AIR 1996 Bombay 366) has rightly refused to

place reliance on his evidence. Secondly, the said witness has not produced the sale deeds and the awards, based on which he has opined that the market value of the acquired land was Rs.125/- per sq. metre. In our view, therefore, the reference Court was justified in rejecting the reference.

9. In view of the above discussion, we do not find any merit in this appeal and, therefore, the same is dismissed. Parties to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.